THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 18348 of 2005

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SATURDAY, THE TWENTIETH DAY OF AUGUST
TWO THOUSAND AND FIVE

Between:

1. Smt.Kola Pentamma, W/o.Late Appanna,
R/o.Sangivalasa Village, Bheemmunipatnam Mandal, Visakhapatnam

district.
2. Kola Appalanarasayya, S/o.Late Appanna,
R/o.Sangivalasa Village, Bheemmunipatnam Mandal, Visakhapatnam

district.
3. Kola Gurumurthy, S/o.Late Appanna,
R/o.Sangivalasa Village, Bheemmunipatnam Mandal, Visakhapatnam

district.
4. Kola Appalakonda, S/o.Late Appanna,
R/o.Sangivalasa Village, Bheemmunipatnam Mandal, Visakhapatnam

district.

..... PETITIONERS

AND

1. The Asst.Commissioner of Endowments, Near Turner Choultry,

Endowments department, Visakhapatnam.
2 Sri.Ramalingeswara Swamy Devalayam , Rep by its Chairman, Sri

P.Appalanarasimha Raju, S/o.Ramachandra Raju, R/o.Sangivalasa,

Bheemunipatnam, Visakhapatnam district.

.....RESPONDENTS

The Court, at the stage of admission, made the following:

Oral order:-

The petitioners are admittedly the cultivating tenants of agricultural lands of Sri Ramalingeswara Swamyvari Devasthanam, Sangivalasa village, Bheemunipatnam mandal, Vishakapatnam district. The 2nd respondent-Devasthanam issued a notification dated 04-08-2005 proposing auction of lease hold rights of its lands, including the lands claimed by the petitioners to be under their cultivation. Seeking interdiction of the auction notice, this writ petition is filed. There is no material to disclose whether a lease has been granted to one or more or all of the petitioners by the Devasthanam. The claim is that their ancestors and thereafter the petitioners were in continuous cultivation of the Devasthanam lands for nearly a hundred years. The lease of religious institutions' lands are governed by the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act No.30 of 1987) (for short 'the Act') and the relevant Rules framed thereunder. The lease cannot be oral nor is a lease seen to be hereditary. Formally, lease agreements specifying the tenure of the lease appear to be a condition precedent for a legitimate and operative lease. Only such lessees, who are legitimately cultivating the lands of the Devasthanamas are perhaps entitled to the benefits under Section 82 of the Act, if they demonstrate that they are landless poor persons. The petitioners have not made any application to the Assistant Commissioner concerned for declaration as landless poor persons and, therefore, entitled to the benefits under Section 82 (2) of the Act.

In the aforesaid factual circumstances, there appears no warrant to

interdict the auction proceedings as at present. The petitioners' apprehend dispossession forthwith on the conduct of the auction. Such cannot be the case. Even if the petitioners are continuing in the Devasthanam lands, without any legitimate lease in their favour, still they would have to be considered as encroachers but liable for eviction under the due process of the law. Till such eviction, in accordance with law, they cannot be dispossessed.

In the circumstances, the writ petition is disposed of enabling the petitioners the liberty to prefer appropriate representations before the concerned Assistant Commissioner of Endowments claiming the status of landless poor persons and for consequential benefits on that basis. Any representations filed by the petitioners in this behalf will be considered by the Assistant Commissioner concerned in accordance with the material available before the said authority, including the existence of any lease executed by the Devasthanam in their favour and their total holdings including as lawful cultivating tenants shall be considered with a view to determine whether they are landless poor persons; and if so, the benefits they are entitled to under the provisions of the Act. The petitioners, however, shall not be dispossessed, save in accordance with the procedure and due process of the law. Nothing in this order shall be construed as an interdiction of the auction proceedings notified by the 2nd respondent's notification dated 04-08-2005. No costs.

GODA RAGHURAM, J

Dt. 20-08-2005

Pvks/*

Nb: Furnish c.c. in two days.

B/o pvks/*